

Application No. 09/862,905

REMARKS

Claims 16-17, 21-34, 49, 51-52, 54, 56, and 58-60 are pending. By this Amendment, claims 16, 49, 51, and 59 are amended. Claims 35-48 and 61-70 were previously withdrawn from consideration.

Claim 16 is amended to recite "the recessed area being generally non-linear in cross section" in place of "the recessed area being generally arcuate in cross section," the amendment having support, e.g., in Figures 8, 9 and 12. Claim 16 is further amended to recite "said at least one ventilator section" in place of "each said at least one ventilator section" to more particularly point out and distinctly claim the subject matter regarded as the invention. Claim 16 is yet further amended to recite "said ventilator first and second panel" in lieu of "each said ventilator first and second panel" to more particularly point out and distinctly claim the subject matter regarded as the invention.

Claim 49 is amended to recite "said first and second panels" in place of "said first and second layers" to more particularly point out and distinctly claim the subject matter regarded as the invention.

Claim 50 is amended to recite "in which said pluralities of first layer apertures are generally aligned" in place of "in which each of said pluralities of first layer apertures are generally aligned" to more particularly point out and distinctly claim the subject matter regarded as the invention.

Claim 59 is amended to depend from claim 56 rather than from cancelled claim 57.

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No new matter has been added by the amendments to the pending claims. In view of the foregoing amendments to the pending claims, Applicants request reconsideration and withdrawal of all rejections.

#### Election/Restriction

Applicants acknowledge the restriction requirement being made final. In the restriction requirement, claims 35-48 are withdrawn from consideration along with added claims 61-70, claims 61-70 being designated as Group III in the restriction requirement of Paper No. 3. Applicants respectfully maintain traversal of the restriction requirement. Applicants specifically traverse the assertion in the Office Action that "the restriction requirement, by itself, establishes that a serious burden would be placed upon the Examiner if more than one invention were to be examined." Indeed, the presence of independent or distinct inventions is only one of two distinct and separate requirements to be satisfied for restriction. The other requirement is that there must be a serious burden on the examiner if restriction is required.<sup>1</sup> To this end, Applicants maintain the traversal of the restriction requirement because an undue burden has not been established by the rationale in the Office Action if all claims were rejoined. Alternatively, Applicants reserve the option of rejoining the withdrawn method claims when the claims under consideration are in condition for allowance.<sup>2</sup>

<sup>1</sup> See MPEP 803 ("There are two criteria for a proper requirement for restriction between patentably distinct inventions: (A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 - § 806.05(i)); and (B) There must be a serious burden on the examiner if restriction is required (see MPEP § 803.02, § 806.04(a) - § 806.04(i), § 808.01(a), and § 808.02).").

<sup>2</sup> See MPEP § 821.04 ("Where product and process claims drawn to independent and distinct interventions are presented in the same application, applicant may be called upon under 35 U.S.C. 121 to elect claims to either the product or process. See MPEP § 806.05(f) and § 806.05(h). The claims to the nonelected

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35 U.S.C. § 251

Claims 16-17, 21-34, 49, 51-52, 54, 56, and 58-60 are rejected under 35 USC § 251, the rejection asserting an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. The rejection asserts that the "language/limitations presented within claims 16-17, 21-34, 49, 51-52, 54, 56, and 58-60 (particularly claims 16 and 49), deletes a limitation or limitations which had been presented within claims as by amendments, as well as argued as a basis for patentability over the applied and cited prior art, filed in response to rejections of claims 1, 4, 7, 8, and 9 of the issued patent no. 5,094,041." Applicants respectfully traverse this rejection for reasons stated below.

Applicants note that the issued claims of U.S. Patent 5,094,041 recite 1) apertures (first and second aperture of claim 1, at least one first and second aperture of claim 4, a plurality of apertures of claim 7, a pocket of claim 8) or 2) a recessed area in the underside of the top panel (claim 9) as differing embodiments of the instant invention. None of the claims recite limitations reading on both apertures and the recessed area. Therefore, recapture cannot encompass both types of limitations in a single pending reissue claim.

1. The rejection specifically asserted that claims 16-17 and 21-34 (particularly claim 16) cancel limitations to "a plurality of vent panels disposed in a stack 'generally proximate to one another, [with] said plurality of vent panels defining said multiplicity of air passages' as had been

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invention will be withdrawn from further consideration under 37 CFR 1.142. See MPEP § 809.02(c) and § 821 through § 821.03. However, if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined." (Emphasis added).

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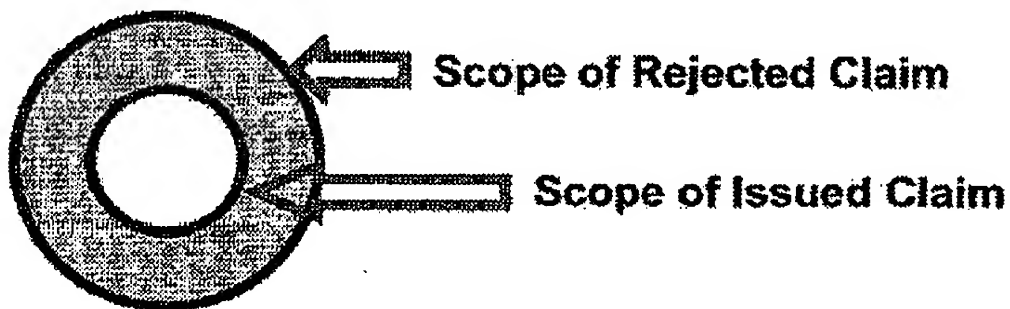
inserted by amendment within claim 1 during prosecution of application serial no. 07/479,376 in order to place the application in condition for allowance." Applicants respectfully traverse this portion of the assertion. Applicants first note that the recapture rule does not require each and every limitation added during prosecution of the original patent application to be present in reissue claims.<sup>3</sup> Applicants secondly note that Applicants are entitled to present limitations broader in scope than the limitations presented during the prosecution of application serial number 07/479,376.<sup>4</sup> Claim 16 as amended recites "a top panel; and at least one ventilator

<sup>3</sup> See Ex parte Eggert, 67 USPQ2d 1716, 1723 (Bd. Pat. App. & Inter 2003) ("The examiner contends that the recapture rule prohibits a patentee from obtaining in reissue any claim which does not include each and every limitation added to a claim or argued by an applicant during the prosecution of the original patent application in order to overcome a rejection and obtain a patent, [citations omitted] as support for this proposition .... This approach, while certainly relatively simple in its application, has been expressly rejected by the Court of Customs and Patent Appeals (CCPA) and the Court of Appeals for the Federal Circuit (Federal Circuit). With respect to Shepard, the CCPA, ... noted that: ... We therefore do not find the Shepard decision to be authority for the proposition that a limitation added to a claim in obtaining allowance cannot be broadened, under present statutory law, by reissue if the limitation turns out to be more restrictive than the prior art required. Certainly one might err without deceptive intention in adding a particular limitation where a less specific limitation regarding the same feature, or an added limitation relative to another element, would have been sufficient to render the claims patentable over the prior art.") (brackets in quotation deleted) (emphasis added).

<sup>4</sup> See Ex parte Eggert, 67 USPQ2d 1716, 1717 (Bd. Pat. App. & Inter 2003) ("The changing scope of a claim during the administrative examination process as it is amended to overcome prior art rejections can be viewed as a series of concentric circles. As illustrated in Drawing 1 [see below], the scope of rejected claim 1 (once amended) is the outer circle and the scope of amended issued claim 1 (twice amended) is the inner circle. The shaded area between the circles represents subject matter which is only narrower than the scope of the rejected claim but only broader than the scope of the issued claim. In our view, the surrendered subject matter is the outer circle of Drawing 1 because it is the subject matter appellants conceded was unpatentable. The subject matter of the shaded area was not subject to the administrative examination process as the examiner was never directly presented with a claim which fell within the scope of the shaded area. Thus, appellants have never conceded that a claim falling within the scope of the shaded area of Drawing 1 is unpatentable and therefore, in our view, such subject matter is not barred by the recapture rule.") (emphasis added).

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section comprising a ventilator first panel and an interconnected ventilator second panel" and "said at least one ventilator section in parallel abutting contact with the top panel ... the top panel and each said ventilator first panel comprising first and second planar plies and an intermediate ply disposed between the first and second planar plies such that the first and second planar plies and intermediate ply define a multiplicity of air passages." Applicants respectfully submit that the foregoing limitations in claim 16 are encompassed by the foregoing amendments to claim 1 of U.S. Patent 5,094,041. The "plurality of vent panels" recited in the foregoing rejection is encompassed by "at least one ventilator section comprising a ventilator first panel and an interconnected ventilator second panel." The limitation in claim 16 reciting "said at least one ventilator section in parallel abutting contact with the top panel" is submitted to be equivalent to the "stack" recited, e.g., in claim 1 of U.S. 5,094,041. While the foregoing limitation to pending claim 16 is not ipsissimis verbis to the limitations in the issued claims, the limitation in pending claim 16 per se is not broader in scope than the foregoing limitation to the issued claims. Moreover, if arguably broader or encompassing recapture subject matter, claim 16 should

**Drawing 1**

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nonetheless be allowable because claim 16 contains limitations "materially narrowed in other respects."<sup>5,6</sup> For example, claim 16 recites that "the top panel and said ventilator first and second panel [comprise] first and second planar plies and an intermediate ply disposed between the first and second planar plies ... [defining] defining a multiplicity of air passages," which is materially narrower than, e.g., claim 1 of U.S. 5,094,041 in "an overlooked aspect of the invention." Hence Applicants respectfully submit that the foregoing limitations are equivalent to a "stack 'generally proximate to one another'" and to the limitations amended into claim 1 of U.S. Patent 5,094,041, viz. "said plurality of vent panels defining said multiplicity of air passages."

<sup>5</sup> Hester Industries, Inc. v. Stein Inc., 46 USPQ2d 1641, 1649-1650 (Fed. Cir. 1998) ("Finally, because the recapture rule may be avoided in some circumstances, we consider whether the reissue claims were materially narrowed in other respects. See, e.g., Mentor, 27 USPQ2d at 1525 ('Reissue claims that are broader in certain respects and narrower and others may avoid the effect of the recapture rule.'). Clement, 45 USPQ2d at 1165. For example, in Ball the recapture rule was avoided because the reissue claims were sufficiently narrowed (described by the court as 'fundamental narrowness') despite the broadened aspects of the claims. 221 USPQ at 296. In the context of a surrender by way of argument, this principle, in appropriate cases, may operate to overcome the recapture rule when the reissue claims are materially narrower in other overlooked aspects of the invention. The purpose of this exception to the recapture rule is to allow the patentee to obtain through reissue the scope of protection to which he is rightfully entitled for such overlooked aspects.").

<sup>6</sup> See, MPEP § 1412.02 (page 14-15) ("Reissue claims that are broader in certain aspects and narrower in others vis-a-vis claims canceled from the original application to obtain a patent may avoid the effect of the recapture rule if the claims are broader in a way that does not attempt to reclaim what was surrendered earlier. Mentor Corp. v. Coloplast, Inc., 998 F.2d 992, 994, 27 USPQ2d 1521, 1525 (Fed. Cir. 1993). "[I]f the reissue claim is as broad as or broader in an aspect germane to a prior art rejection, but narrower in another aspect completely unrelated to the rejection, the recapture rule bars the claim; [] if the reissue claim is narrower in an aspect germane to [a] prior art rejection, and broader in an aspect unrelated to the rejection, the recapture rule does not bar the claim, but other rejections are possible." Clement, 131 F.3d at 1470, 45 USPQ2d at 1165. If the broadening aspect of the reissue claim relates to subject matter previously surrendered, the examiner must determine whether the newly added narrowing limitation in the reissue claim modifies the claim such that the scope of the claim no longer results in a recapture of the surrendered subject matter. If the narrowing limitation modifies the claim in such a manner that the scope of the claim no longer results in a recapture of the surrendered subject matter, then there is no recapture. In this situation, even though a rejection based on recapture is not made, the examiner should make of record the reason(s) why, as a result of the narrowing limitation, there is no recapture.").

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2. The rejection also asserted claims 16-17 and 21-34 (particularly claim 16) cancel limitations to "a first aperture extending through a first one of the plurality of vent panels 'and interrupting at least a portion of the multiplicity of air passages therein,'" the rejection stating the foregoing passage was inserted by amendment within claim 1 during prosecution of application serial number 07/479,376 in order to place the application in condition for allowance.

Applicants respectfully traverse this portion of the rejection. Claim 16 recites "the top panel defining a recessed area in with the top panel first planar ply and at least a portion of the top panel intermediate ply have been removed." Hence, claim 16 addresses the "recessed area" of the present invention and does not address the "first aperture" as a part of the present invention. Applicants also note that allowed claim 9 of U.S. Patent 5,094,041 addresses a corresponding limitation and also fails to recite the limitation addressed by this portion of the rejection or an equivalent thereof. To this end, Applicants simply cannot be required to include limitations amended into all issued claims. The context is the broadest claim reading on the embodiment for which protection is being sought in a reissue proceeding. Therefore, Applicants submit that improper recapture is not properly applied to this limitation with respect to claim 16 because a different embodiment is being claimed and because the embodiment claimed in issued claim 9 of U.S. Patent 5,094,041 did not recite this limitation (see also note 3). In view of the foregoing rationale and limitations, Applicants respectfully traverse that they can be properly required to amend pending independent claim 16 with the foregoing limitation.

3. The Office Action further asserted claims 16-17 and 21-34 (particularly claim 16) cancel limitations to "a second aperture extending through a second one of the plurality of vent panels

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'and interrupting at least a portion of the multiplicity of air passages therein,'" the rejection asserting that the foregoing limitation had been inserted by amendment within claim 1 during prosecution of application serial number 07/479,376 in order to place the application in condition for allowance. Applicants respectfully traverse this portion of the rejection. Applicants point out for reasons stated in paragraph 2, above, that claim 16 recites limitations characteristic of a different embodiment of the present invention than issued claim 1. Therefore, Applicants cannot properly be required to amend claim 16 with the foregoing limitation. In view of the foregoing reasons and amendments to the pending claims, Applicants respectfully request withdrawal of this portion of the rejection.

4. The Office Action still further asserted that claims 16-17 and 21-34 (particularly claim 16) cancel limitations to "at least a first vent panel and a second vent panel connected to said first vent panel such that said first vent panel is disposed above said second vent panel 'to form a stack, said first vent panel and said second vent panel defining said multiplicity of air passages,'" the Office Action asserting that the foregoing limitation had been inserted by amendment within claim 4 during prosecution of application serial number 07/479,376 in order to place the application in conditions for allowance. Applicants respectfully traverse this portion of the rejection. Applicants respectfully point out that claim 16 (as amended) recites "a top panel; and at least one ventilator section comprising a ventilator first panel and an interconnected ventilator second panel." and "each said at least one ventilator section in parallel abutting contact with the top panel." Applicants respectfully submit that parallel abutting contact in the foregoing context is equivalent to "form[ing] a stack." Applicants further point out that claim 16, as amended,



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recites "the top panel and each said ventilator first and second panel comprising first and second planar plies and an intermediate ply disposed between the first and second planar plies such that the first and second planar plies and intermediate ply define a multiplicity of air passages" a materially narrower limitation than present in issued claim 4. If any of the asserted missing limitations are partially recapture, claim 16 is allowable because claim 16 recites a materially narrower limitation. See note 5. Hence, Applicants respectfully submit that the foregoing claim 16 limitations are equivalent to the limitations recited hereinabove with respect to claim 4 of U.S. Patent 5,094,041.

5. The Office Action still yet further asserted that claims 16-17 and 21-34 (particularly claim 16) cancel limitations to "at least one first aperture extending through the first vent panel 'and interrupting at least a portion of the multiplicity of air passages,'" as had been inserted by amendment within claim 4 during prosecution of application serial number 07/479,376 in order to place the application in condition for allowance. For reasons stated in paragraph 2, above, Applicants respectfully traverse this part of the rejection. Applicants additionally and respectfully point out that claim 16 recites an alternate limitation to the present invention, "a recessed area" defined by the top panel. Applicants respectfully refer the Examiner to claim 9 of U.S. Patent 5,094,041, wherein "a recessed area" is recited and which does not contain this limitation. Applicants note that Applicants were not required to amend issued claim 9 to recite this limitation. Hence, Applicants submit that recapture is not properly asserted in the Office Action in this respect. Thus, inter alia because pending claim 16 describes an alternate

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embodiment to "at least one first aperture," Applicants cannot properly be required to amend this limitation into pending claim 16.

6. The Office Action yet still further asserted that claims 16-17 and 21-34 (particularly claim 16) cancel limitations to "at least one second aperture extending through the first vent panel 'and interrupting at least a portion of the multiplicity of air passages,'" as had been inserted by amendment within claim 4 during prosecution of application serial number 07/479,376 in order to place the application in condition for allowance. For reasons stated in paragraph 2, above, Applicants respectfully traverse this portion of the rejection. Applicants additionally point out that pending claim 16 recites "a recessed area," which is an alternate embodiment of the present invention and which is recited in allowed claim 9 of U.S. Patent 5,094,041 and does not recite this limitation. Applicants repeat that they cannot be properly required to amend the pending claims with every limitation amended into every issued independent claim. This limitation, recited in allowed claim 4 of U.S. Patent 5,094,041, was not amended into claim 9 as a condition for allowance thereof. Therefore, Applicants submit that they cannot be properly required to amend pending claim 14 to include the foregoing limitation.

7. The Office Action still further asserted that claims 16-17, 21-34, 49, 51-52, 54, 56, and 58-60 (particularly claims 16 and 49) cancel limitations to "each of said pair of vent parts including a plurality of vent panels 'which are interconnected and generally parallel to one another' and disposed in a stack 'generally proximate to one another, said plurality of interconnected vent panels defining said multiplicity of air passages,' as had been inserted by

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amendment within claim 7 during prosecution of application serial number 07/479,376 in order to place the application in condition for allowance. In particular, claim 49 deletes of the above 'a plurality of vent panels which are interconnected and generally parallel to one another.'

Applicants respectfully traverse this portion of the rejection. Pending claim 16 (as amended) recites "at least one ventilator section comprising a ventilator first panel and an interconnected ventilator second panel," "each of said at least one ventilator section in parallel abutting contact with the top panel," and "the top panel and each said ventilator first and second panel comprising first and second planar plies and an intermediate ply disposed between the first and second planar plies such that the first and second planar plies and the intermediate ply define a multiplicity of air passages." Applicants submit that the foregoing limitations to pending claim 16 (as amended) are equivalent to the limitations cited with respect to claim 7 of U.S. Patent 5,094,041 and also represent a narrower limitation than contained in issued claim 7. Because a narrower limitation unrelated to the rejection is present in pending claim 16, claim 16 is allowable a fortiori. See notes 5 and 6. Pending claim 49 recites "each of said first and second ventilator sections comprising a first panel and a second interconnected panel... in a contacting stacked relationship and defining a multiplicity of air passages." Applicants respectfully submit that the foregoing limitations to pending claim 49 (as amended) are equivalent to the foregoing limitations cited with respect to allowed claim 7 of U.S. Patent 5,094,041. Moreover, pending claim 49 recites "each of said first and second panels comprising a corrugated material defining a multiplicity of air passages," which is a narrower limitation than contained in issued claim 7 and is unrelated to the rejection of claim 7 in the prosecution history thereof. Therefore, claim 49 is allowable a fortiori.

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8. The Office Action asserted that the above deleted limitations were argued as a basis for patentability for claims 1, 4, and 7 on pages 8, (lines 1-6), 9, (lines 16-20), 11, (lines 1-4), and 12, (lines 1-6), of the October 10, 1990 amendment, during prosecution of application serial number 07/479,376 in order to place the application in condition for allowance. Applicants have addressed each of the foregoing asserted limitations separately hereinabove and maintain the traversals for the reasons stated above.

9. The Office Action asserted that claims 16-17, 21-34, 49, 51-52, 54, 56, and 58-60 (particularly claims 16 and 49) "cancel limitations to 'a pocket defined by and extending at least partially through at least a one of the vent parts with 'said pocket being spaced apart from the interior region by the vent part,' as had been inserted by amendment within claim 8 during prosecution of application serial number 07/479,376 in order to place the application in condition for allowance." For reasons stated in paragraph 2, above, Applicants respectfully traverse this portion of the rejection. Applicants first additionally submit that the foregoing limitations cannot properly be required to be amended in the pending claims. Inter alia, Applicants note the rule that "the recapture rule may be avoided in some circumstances ... when the reissue claims are materially narrower in other overlooked aspects of the invention." Applicants' rationale is that claim 8 of U.S. Patent 5,094,041 contains extremely broad limitations except for the limitations referenced in this portion of the rejection. In the case of pending claims 16 and 49, both are materially narrower in other aspects of the invention. For example, pending claim 16 recites "at least one ventilator section comprising a ventilator first panel and an interconnected ventilator

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second panel in parallel abutting contact with the top panel" and "the top panel and each said ventilator first panel comprising first and second planar plies and an intermediate ply disposed between the first and second planar plies such that the first and second planar plies and intermediate ply define a multiplicity of air passages." By further example, pending claim 49 recites "a corrugated material defining a multiplicity of air passages and a plurality of apertures" and "first and second ventilator sections generally symmetrically extending outboard from a substantially longitudinal center line." Because of the foregoing limitations, materially narrower in aspects unrelated to the rejection of claim 8, claims 16 and 49 should be in condition for allowance. Moreover, none of the foregoing limitations asserted as recapture is recited in other of the allowed claims of U.S. Patent 5,094,041 and Applicants cannot be required to amend every limitation of every allowed claim into the pending reissue claims. Therefore, Applicants respectfully assert that the recapture rule is properly avoided because pending claims 16 and 49 are narrower in other overlooked aspects of the instant invention and because every limitation of every allowed independent claim need not be present in the pending reissue claims.

10. The Office Action further asserted that claims 16-17, 21-34, 49, 51-52, 54, 56, and 58-60 (particularly claims 16 and 49) "cancel limitations to 'said pocket being at least partially enclosed along a first side disposed closest to the interior region of the roof ventilator by one of the vent parts' as well as 'said pocket being at least partially enclosed along a second side disposed closest to the exterior region surrounding the roof ventilator by said one of the vent parts' as had been argued as a basis for patentability of claim 8 on pages 2-3 of the July 1, 1991 amendment, during prosecution of application serial number 07/479,376 in order to place the application in condition

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for allowance." For reasons stated in paragraph 2, above, Applicants traverse this portion of the rejection. Applicants initially point out that the recapture rule is avoided in this case because pending claims 16 and 49 are materially narrower in other aspects thereof than claim 8 of U.S. Patent 5,094,041. For example, claim 16 recites "the top panel and said ventilator first and second panel comprising first and second planar plies and an intermediate ply disposed between the first and second planar plies," a narrower limitation not recited in allowed claim 8. Pending claim 49 recites "a corrugated material defining a multiplicity of air passages and a plurality of apertures" and "first and second ventilator sections generally symmetrically extending outboard from a substantially longitudinal center line," also a narrower limitation not related to the rejection of the issued claim and not recited in claim 8. Moreover, Applicants cannot be properly required to include every limitation of every allowed claim in the pending claims. Additionally, claim 16 claims another embodiment of the instant invention. Hence, Applicants cannot properly be required to amend the asserted limitations into claim 16. For the foregoing reasons, Applicants cannot be required to amend this limitation into claims 16 or 49.

11. The Office Action further asserted claims 16-17 and 21-34 (particularly claim 16) "cancel limitations to 'a recessed area cut in the top panel with the recessed area defining a plurality of openings with 'each of said plurality of openings having a pair of side walls defined by the intermediate ply, each of said pair of side walls traversing a generally oval shaped path, such that the top panel may be manually folded across a path disposed within said recessed area' as had been inserted by amendment within claim 9, as well as argued on pages 4-5 of the March 4, 1991 amendment, during prosecution of application serial no. 07/479,376 in order to place the

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application in condition for allowance." Applicants respectfully traverse this portion of the rejection. Applicants first note that the foregoing asserted limitation cannot properly be considered as recapture. See note 4. Therefore, corresponding limitations in pending claim 16 must be assessed against the prior art for patentability because the corresponding limitations in pending claim 16 were not subject to the administrative examination process as the examiner was never directly presented with a claim which fell within the scope of the "shaded area" of note 4. Thus, Applicants have never conceded that a claim, such as pending claim 16, falling within the scope of the shaded area of Drawing 1 is unpatentable and therefore, such subject matter is not barred by the recapture rule

12. The Office Action further asserted claims 49, 51-52, 54, 56, and 58-60 (particularly claim 49) cancel limitations to "a top panel disposed above a pair of vent parts and formed of a pair of planar plies and an intermediate ply, a recessed area cut in the top panel with the recessed area defining a plurality of openings with 'each of said plurality of openings having a pair of sidewalls defined by the intermediate ply, each of said pair of sidewalls traversing a generally oval shaped path, such that the top panel may be manually folded across a pad disposed within said recessed area,' as had been inserted by amendment within claim 9, as well as argued on pages 4-5 of the March 4, 1991 amendment, during prosecution of application serial number 07/479, 376 in order to place the application in condition for allowance." As shown above, pending claims 16 and 49 are materially narrower in other aspects thereof than claim 8 of U.S. Patent 5,094,041. Hence, the recapture rule is properly avoided in this situation. Moreover, pending claim 49 discloses "apertures ... extending substantially through said first and second

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panels so as to interrupt at least a portion of said multiplicity of air passages," rather than the "oval shaped path." Applicants note that allowed claim 1 fails to recite this limitation also. Applicants further note avoiding recapture does not require that every limitation of every allowed claim into the pending independent claims.

13. In view of the foregoing, Applicants submit that pending claims 16 and 49 should not be rejected under 35 U.S.C. § 251 and the recapture rule. The other rejected claims are not specifically addressed and depend directly or indirectly from claim 16 or claim 49. Hence, Applicants submit that none of the rejected claims, as amended, are now properly rejected. Therefore, Applicants respectfully request that the rejection under 35 U.S.C. § 251 and the recapture rule be withdrawn.

35 U.S.C. § 112

The Office Action rejected claims 16-17, 21-34, 51-52, and 59 under 35 U.S.C. § 112, ¶ 2, as indefinite. The rejection asserts that claim 16, lines 4 and 10 "each said at least one ventilator section" lacks an antecedent basis within the claim. Line 6, "each said ventilator first and second panel" lacks an antecedent basis within the claim, querying "is 'said ventilator first and second panel' a single element? or should line of claim 16 read 'each of said ventilator first panel and said ventilator second panel?'" The rejection further states that the foregoing "ambiguity at line 6 of claim 16 precipitates a rejection under 35 USC 251 with respect to 'said plurality of vent panels defining said multiplicity of air passages.'" Claim 16 has been amended



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as described above. If claim 16 was indefinite before being amended, claim 16 is submitted to be no longer indefinite in view of the amendments thereto.

The rejection states, "Claim 49, line 9, 'said first and second layers' lacks antecedent basis within the claim." Claim 49 has been amended as described above and is submitted to be no longer indefinite, if claim 49 was indefinite before being amended.

The rejection further states, "Claim 51, line 1, 'said pluralities of first layer apertures' lacks a proper antecedent within the claim. Otherwise, to what does 'said pluralities ...' refer? Line 2, 'said second layer apertures' lacks an antecedent within the claim." Claim 51 has been amended as described above. In view of the amendments thereto, claim 51, if indefinite before the amendment, is no longer indefinite.

The rejection yet further states that claim 59 appears dependent upon a canceled claim. Claim 59 has been amended to depend from claim 56, which is not canceled.

In view of the amendments to the rejected claims, none of claims 16, 49, 51, and 59 are indefinite. The other rejected claims depend from one of claims 16, 49, 51, and 59 and are, hence, no longer indefinite as well. Applicants submit that none of the pending claims are indefinite. However, Applicants would be receptive to suggestions from the Examiner to more distinctly claim the subject matter regarded as the invention. In view of the foregoing, reconsideration and withdrawal of the rejection is respectfully requested.

#### Status of Withdrawn Claims

The previous Office Action required cancellation of nonelected claims or other appropriate action under 37 C.F.R. § 1.144 as explained in MPEP § 821.01. Applicants have


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reserved the right to amend the withdrawn claims to contain the limitations in allowed claims and thereby rejoin the withdrawn claims upon allowance of the elected claims. Therefore, Applicants submit that "other appropriate action" is reserved.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

  
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